

Filed 8/15/19 In re J.B. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re J.B., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

James B.,

Defendant and Appellant;

T.B.,

Intervener and Respondent.

B293840

Los Angeles County
Super. Ct. No.
17CCJP00511B

APPEAL from orders of the Superior Court of Los Angeles
County, Kristen Byrdsong, Juvenile Court Referee. Reversed.

Christine E. Johnson, under appointment by the Court
of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sally Son, Deputy County Counsel for Plaintiff and Respondent Los Angeles County Department of Children and Family Services.

Linda Rehm, under appointment by the Court of Appeal, for Plaintiff and Respondent T.B.

INTRODUCTION

Father appeals from a jurisdictional order declaring his two-year-old son, J.B., a dependent of the juvenile court under Welfare and Institutions Code section 300, subdivision (b).¹ In asserting jurisdiction, the court found that father was a current abuser of marijuana, and that his marijuana use placed J.B. at risk due to the child's very young age. However, the undisputed evidence showed J.B. was well cared for, and father never used marijuana when he cared for the child. In view of this undisputed evidence, J.B.'s tender age was insufficient to support jurisdiction.

Father also appeals from a restraining order prohibiting certain contact with J.B.'s mother. We conclude mother's conclusory allegations that father had been "harassing" her and "pressuring her" to give him unauthorized access to J.B. were insufficient to support the order. Both orders are reversed.

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the evidence in the light most favorable to the juvenile court's rulings, drawing all inferences and resolving all evidentiary conflicts in favor of the court's orders. (*In re David M.* (2005))

¹ Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

134 Cal.App.4th 822, 828 (*David M.*); *In re C.Q.* (2013) 219 Cal.App.4th 355, 364 (*C.Q.*).)

1. *The Dependency Petition and Detention*

The family consists of father, mother, and their child J.B. (born June 2016). Mother also has an older son, D.E., by a different father.

Father has had contacts with the Los Angeles County Department of Children and Family Services (the Department) dating back to 2007; however, it was an allegation of medical neglect against mother involving her other son, D.E., that precipitated the current case.² D.E. requires daily assistance with feeding and physical care due to severe osteopenia, cerebral palsy, and hypertonia. He is non-verbal and non-ambulatory. In September 2017, the Department received a report that mother failed to provide D.E. with adequate nutrition and then refused a medical professional's order to treat the resulting deficiency with a gastric feeding tube. The report also alleged that mother failed to take D.E. to several critical appointments with medical specialists. On December 4, 2017, the juvenile court asserted jurisdiction over D.E., finding mother's medical neglect of the child endangered his physical health and safety.

In view of mother's neglect of D.E., the Department determined J.B. also might be at risk for general neglect. On January 31, 2018, mother and father agreed to a voluntary family maintenance plan (VFM) to address the Department's concerns. Under the VFM, father agreed to participate in a parenting education program and individual counseling, and to submit to random drug testing. Mother also agreed to participate in a parenting education program and counseling.

² All prior investigations concluded with a determination that the abuse allegations were either unfounded or inconclusive.

In February 2018, a social worker met with father. Father reported that he did not live with mother and that mother was J.B.'s primary caregiver. He did not know of anything wrong with the medical or daily care that mother provided the child. He said he visited with J.B. three to four times a week for two to three hours each visit.

Father produced a doctor's note purporting to authorize his use of marijuana for medical purposes, and he claimed he used the drug, in lieu of "pills," to alleviate migraine headaches. When asked to provide a more specific diagnosis or medical authorization to use marijuana, father responded that he did not have the "money to see a doctor," and suggested he could "hold off on using marijuana for a while," because he wanted to "cooperate and not cause any more problems." The social worker noted that, "[e]xcept father's [justification for] his marijuana use, father was respectful and open to different options to treat his migraines."

Mother and her two children lived with the maternal grandparents in the grandparents' home. She confirmed that father did not live in the home, and that he came over only for visits with J.B. Although she acknowledged that father used marijuana, she had "never seen him under the influence" and she "trusted" him to care for J.B. alone. She denied that father posed a safety risk to J.B., and she became upset when the social worker suggested father's marijuana use justified the Department's supervision of her family. The social worker noted that, in "[a]ddition to mother allowing father . . . unlimited access to the child," mother had "failed to enroll" in a parenting program or counseling.

In March 2018, father reported he had "started having [an] allergic reaction to the pills for his migraine" and he "wanted to go back [to] using marijuana." He had "rarely" been able to visit with J.B. due to his work schedule. The social worker reminded

father of the VFM and instructed him that if he wanted to use marijuana in lieu of traditional medication, he needed to have a medical doctor “write in detail as to why there is no alternate medication for [him] to ease his migraine other than marijuana.”

In April 2018, father reported that mother had been harassing his family and sending threatening text messages to his sister and his mother. Mother had also been preventing him from visiting with J.B. Due to mother’s alleged harassment, father said he was “under lots of stress and had to use marijuana to relax.” He also was no longer working. The social worker noted that father’s drug test results showed a “high level” of marijuana and reminded him of his obligation to enroll in a parenting education program and counseling. The social worker also assured father that visits with J.B. would occur at the Department’s office going forward. Father thanked the social worker for facilitating visitation.

Mother denied that she had threatened father’s family, and she agreed to bring J.B. to the Department’s office for visits with father. After two visits with J.B., father stopped coming to the Department’s office for his weekly visits.

In May 2018, father complained to the social worker that the Department had sent him to a “gang infested area” for drug testing. The social worker reminded father that he had chosen the testing site and told him that “noncompliance” with his VFM would “negatively affect the case.” Father left the meeting without responding.

Later that month, a social worker visited mother and determined she was “meeting the needs” of J.B. and “on top of things.” The social worker had “[n]o concerns of any abuse or neglect.” As for father, the social worker reported he was not complying with drug testing and had stopped visiting with J.B. at the Department’s office. The social worker noted father did

not live with mother and J.B., and confirmed there was “[n]o suspicion of drug use by mother.” The social worker concluded, “[m]other seems appropriate.”

Mother reported that father had not visited J.B. for a few weeks, and that the maternal grandparents were always present during earlier visits. She reaffirmed that father never cared for J.B. while under the influence of marijuana, explaining that she “knows the sign[s] of the father being under the influence” and that she “would never let the father visit with [J.B.] [if] she suspect[ed] that the father [was] under the influence.”

On May 24, 2018, the Department learned that patrol officers had detained father because he “appear[ed] to be under the influence of substances.” The officers searched father and arrested him after they found him in unlawful possession of prescription hydrocodone.

In June 2018, father reported that he could not comply with the VFM or drug test demands because he was currently homeless. Mother said father had also told her that he would not comply with the VFM. She encouraged the social worker to “go ahead and detain [J.B.] from father if you’d like.” Other than father’s refusal to cooperate with the Department, mother said there were “no significant changes or concerns in her home or with [J.B.]”

In July 2018, the Department had another follow-up visit with mother. Mother discussed her plans to move out of the maternal grandparents’ home and reunify with father by the end of 2018. She did not feel father posed a threat to her children and reaffirmed that she would “not allow [father] to care for or visit with [J.B.] if she suspects that the father is under the influence.” The social worker noted that mother still had not started her parenting classes, and that father had not contacted the Department since early June.

On August 2, 2018, the Department filed a petition to declare J.B. a dependent child under section 300, subdivision (b)(1). As its sole basis for jurisdiction, the petition alleged: “[Father] is a current abuser of marijuana, which renders the father incapable of providing regular care for the child. The child, is of such a young and tender age as to require constant care and supervision. On [March 19, 2018; March 6, 2018; February 26, 2018; and December 28, 2017], the father had positive toxicology screens for marijuana. The father has a history of criminal convictions of Possess Concentrated Cannabis and Possess Controlled Substance and is a Registered Control[led] Substance offender. Remedial services failed to resolve the family problem in that the father continues to abuse marijuana. Said substance abuse by the father endanger[s] the child’s physical health and safety and place[s] the child at risk of serious physical harm, damage, and danger.”

In a report filed with the petition, the Department detailed its interactions with the parents dating back to the VFM, father’s positive toxicology screens, and father’s criminal conviction history. Based principally upon father’s most recent arrest, his four positive drug tests indicating “high level of cannabinoids ranging from 3064 ng/ml to 6724 ng/ml,” and his refusal to participate in a parenting education program and counseling “in violation of the VFM,” the Department recommended that the juvenile court detain J.B. from father’s custody.³ On August 3, 2018, the court detained J.B. from father’s custody, concluding the Department’s report established a prima facie case for jurisdiction as alleged in the dependency petition. The court released J.B. to mother’s custody, with Department supervision, pending a hearing on jurisdiction and disposition.

³ Father failed to submit to seven other drug tests.

2. *The Jurisdiction and Disposition Report*

In advance of the hearing, the Department filed a report recommending that the juvenile court declare J.B. a dependent as alleged in the petition, remove the child from father's physical custody, and retain J.B. in mother's custody with an order prohibiting father from residing in the home.

The Department reported J.B. was developmentally delayed and could not walk due to diagnosed hypoplasia. A neurologist continued to monitor him for seizures that had recently subsided. He also had a recent eye surgery that required monitoring.

Mother reported that father had smoked marijuana for as long as she had known him, but she did not know how much or how often he smoked because he never smoked in front of her or her children. And, because he was never under the influence around her or the children, mother had never confronted father about his marijuana use. As for father's arrest for unlawful possession of prescription hydrocodone, mother reported the medication belonged to the paternal grandmother, and father used it to relieve the pain from a cracked tooth.

A court record showed father had his possession charge diverted for 12 months, on the conditions that he pay fines, complete a controlled substance treatment program, and not use or possess any narcotics without a valid prescription.

Mother insisted father was "really good" with J.B., they had a "close attachment," and J.B. "adore[d]" father. She described father changing and feeding J.B., their video chats, and how J.B. stops crying when he hears father's voice.

As for their living arrangements, mother confirmed father would not be living in her parents' home because they were tired of him "coming and going back and forth." She wanted to move in with father, but neither of them was working and they could not

afford a suitable place to live as a family. To her knowledge, father was living on “the streets in a tent in the park,” and he did not have a telephone or other means of contact. She had not seen him in nearly two weeks and did not know when he would visit her again.

Father was unable to meet with a social worker because he was out of town trying to find work. He confirmed he was homeless and was unsure when he would return. When the conversation turned to his marijuana use, father became upset and started yelling at the social worker. He complained J.B. should not have been removed from his care because “marijuana is legal.” He also said the dependency proceedings had made him “feel like he does not want to be a father anymore,” and he suggested he might be comfortable “just paying child support and getting pictures of [J.B.]” He did not complete the VFM programs because he “did not feel they were necessary.” He said he might contact the Department if he returned to the area, but he “did not know when or if he would be back.”

3. *Mother’s Request for a Restraining Order*

On October 16, 2018, mother informed the Department that she “suspects that father has been ‘harassing’ her and creating fake social media accounts for her with her telephone number.” Mother said she spoke to the police but they “would not file a report” and told her they “could not do anything without verification or proof that father actually created the accounts [with] mother’s contact information.” The police advised her to seek a civil restraining order if she was being harassed.

On October 17, 2018, mother filed a request for a restraining order in the juvenile court, seeking an order prohibiting father from harassing or coming within 100 yards of her, her home, her vehicle, or her workplace. On the application form she checked a box indicating father had “caused one or more

of the persons to be protected to fear physical or emotional harm.” In the area where she was to “describe in detail the most recent incidents supporting this application, or attach copies of reports of law enforcement officers,” mother wrote: “[Father] has been harassing [mother] and pressuring her into giving him unauthorized access to the minor, [J.B.]” She did not attach a declaration or any other evidence to the request form.

On October 17, 2018, the juvenile court granted mother a temporary restraining order, and set a hearing on a permanent order to coincide with the jurisdiction and disposition hearing.

On November 5, 2018, father contacted the Department to complain that mother had been harassing him via text messages and social media. He sent screenshots of undated text exchanges to the social worker, including one in which mother threatened to kill herself if father left her and another in which she suggested a meeting with J.B. away from the home where the Department could not monitor them. When questioned about the texts, mother insisted she had not communicated with father since obtaining the restraining order. The social worker reminded mother of the existing court orders, and the grandparents confirmed they would care for mother’s children if mother failed to comply.

4. *The Jurisdiction, Disposition, and Restraining Order Hearing*

On November 8, 2018, the juvenile court held a combined jurisdiction and disposition hearing, and also a hearing on mother’s request for a permanent restraining order against father. Mother attended the hearing. Father was not present.

Father’s counsel opposed jurisdiction, arguing the Department’s evidence failed to establish a nexus between father’s marijuana use and the alleged risk of harm to J.B. He emphasized mother’s consistent assertions that father had

never been under the influence of marijuana around her or her children.

Minor's counsel argued the petition should be sustained because the Department had "clearly shown that the efforts in the [VFM] were unsuccessful in remedying the problems that brought the case to the Department's attention." Counsel stressed that J.B. was "very young" and he fell within the "category of [] tender years . . . [], which the court can rely upon to find that father's drug abuse places [the child] in substantial risk of serious physical harm." She also noted that father's recent arrest showed the potential risk was "not just an issue of father's ongoing marijuana use but also [illegal] possession of prescription drugs."

The Department joined with minor's counsel, adding only that father's drug tests showed "pretty high levels" of marijuana.

The juvenile court found the petition "true as alleged" and declared J.B. a dependent child under section 300, subdivision (b)(1). Regarding disposition, the court found returning J.B. to father's custody would pose a substantial danger to the child's physical safety, "given that he is a minor of tender years and father's unresolved drug issues, [including] his missed tests and high levels present when he did test."

As for the restraining order, father's counsel argued there was no evidence to support the issuance of a permanent order, stressing that mother's request provided "no information [to] show[] that father is a risk to mother or that mother is currently fearful for her own safety."

Mother's counsel stated that if the court needed "more evidence of mother's fear of safety," mother was "willing to testify at this time."

The juvenile court declined mother's offer to testify, and granted the permanent restraining order for a period of three years, citing "the issues of violence in this case."

DISCUSSION

1. *The Evidence Was Insufficient to Support Jurisdiction*

Father contends the evidence was insufficient to support the juvenile court's finding that his ongoing use of marijuana, as alleged in the dependency petition, caused J.B. to suffer, or to be at substantial risk of suffering, serious physical harm or illness. We agree.

"We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible. [Citation.] 'However, substantial evidence is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal.'" (*David M.*, *supra*, 134 Cal.App.4th at p. 828, italics omitted; *In re Drake M.* (2012) 211 Cal.App.4th 754, 763 (*Drake M.*)). Furthermore, where application of the statute authorizing juvenile court jurisdiction turns on undisputed facts, we independently review the matter as a question of law without deference to the lower court's determination. (*In re R.C.* (2011) 196 Cal.App.4th 741, 748.)

Section 300, subdivision (b), authorizes juvenile court jurisdiction where it is shown that a "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, . . . or by the inability of the parent . . . to provide regular care for the child

due to the parent's . . . substance abuse." (§ 300, subd. (b)(1).) A jurisdictional finding under section 300, subdivision (b)(1), requires the Department to demonstrate by a preponderance of the evidence: (1) neglectful conduct, or the failure or inability of the parent to adequately supervise or protect the child; (2) causation; and (3) serious physical harm or illness or a substantial risk of serious physical harm or illness. (*In re L.W.* (2019) 32 Cal.App.5th 840, 848 (*L.W.*); *In re Joaquin C.* (2017) 15 Cal.App.5th 537, 561; see also *In re R.T.* (2017) 3 Cal.5th 622, 624.)

Consistent with the statutory text, the petition in this case alleged father was "a current abuser of marijuana," J.B. was of "such a young and tender age as to require constant care and supervision," and father's substance abuse rendered him "incapable of providing regular care for the child" thereby placing J.B. "at risk of serious physical harm, damage, and danger."

As a general matter, the legislature has declared that "[t]he provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (§ 300.2.) And our courts have repeatedly held that a juvenile court "need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child." (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) But as already noted, under section 300, subdivision (b), state intervention is not warranted unless a parent has neglected his or her child due to one of the enumerated factors, such as drug use, and there is a substantial risk of harm in the future. Thus, we have held that "without more, the mere usage of drugs by a parent is not a sufficient basis on which dependency jurisdiction can be found." (*Drake M., supra*, 211 Cal.App.4th at p. 764; see also *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453

“[W]e have no quarrel with Father’s assertion that his use of medical marijuana, *without more*, cannot support a jurisdiction finding that such use brings the minors within the jurisdiction of the dependency court, not any more than his use of the medications prescribed for him by his psychiatrist brings the children within the jurisdiction of the court.”]; *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 728 [accepting the Department’s position that “when a parent engages in substance abuse, dependency court jurisdiction is proper” “would essentially mean that physical harm to a child is *presumed* from a parent’s substance abuse under the dependency statutes, and that it is a parent’s burden to prove a negative, i.e., the *absence* of harm”; “this is not what the dependency law provides”].)

In most cases, this something more is “an *identified, specific hazard*” arising from the substance abuse. (*Drake M., supra*, 211 Cal.App.4th at pp. 766-767; cf. *L.W., supra*, 32 Cal.App.5th at p. 850 [drunk driving arrests and reckless driving conviction were “evidence of substance abuse in a situation in which it is physically hazardous to do so”].) However, where the child is of “such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety,” the “finding of substance abuse is *prima facie* evidence of the inability of a parent or guardian to provide regular care resulting in substantial risk of physical harm.” (*Drake M.*, at pp. 766-767; accord, *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216, 1219 (*Christopher R.*).) But, as with any *prima facie* showing, this “tender years” presumption can be rebutted by evidence indicating a lack of risk. (See Evid. Code, § 602 [“A statute providing that a fact or group of facts is *prima facie* evidence of another fact establishes a rebuttable presumption.”].)

There is no doubt on this record that the juvenile court’s jurisdictional finding rested solely on the tender years presumption. The dependency petition did not allege J.B. had ever suffered actual harm or neglect, and there was no evidence to support such an allegation even if it had been made.⁴ Rather, the petition expressly referred to the child’s “tender age” and his consequent need for “constant care and supervision.”⁵ Similarly, in arguing the petition should be sustained, minor’s counsel and the Department emphasized J.B.’s “tender years” and referenced “case law” authorizing the court to find a substantial risk from parental drug use when a child falls into that “category.” Neither counsel suggested any other specific hazard to justify dependency jurisdiction. And the juvenile court, while relying on the petition’s allegation to find jurisdiction, observed in making its disposition order that maintaining J.B. in father’s custody would pose a substantial danger to the child’s health and safety, “given that he is a minor of tender years and father’s unresolved drug issues.”

The juvenile court was correct insofar as parental substance abuse may serve as *prima facie* evidence of neglect when a child is of tender years, even in the absence of an identified specific hazard arising from the substance abuse. (See *Drake M.*, *supra*, 211 Cal.App.4th at p. 764.) However,

⁴ The Department expressly concedes in its respondent’s brief that there was “no evidence presented that [J.B.] had yet been physically harmed by Father’s current substance abuse.”

⁵ Children six years old or younger are generally considered to be of “tender years.” (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219.) J.B. was two years old at the time of the hearing. (See also *Drake M.*, *supra*, 211 Cal.App.4th at p. 767 [applying tender years presumption to 14-month-old child].)

the court erred in treating J.B.’s young age and father’s habitual marijuana use as *conclusive* evidence of substantial risk, rather than as *prima facie* evidence that could be rebutted by evidence establishing that no risk of harm existed. Here, there was evidence to rebut the presumption, and it was undisputed.

The Department consistently reported, and mother steadfastly maintained, that father never smoked marijuana in front of mother or J.B. Mother confirmed she “kn[ew] the sign[s] of the father being under the influence” and that she “would never let the father visit with [J.B.] [if] she suspect[ed] that the father [was] under the influence.” Notably, the Department reported it had “[n]o concerns of any abuse or neglect” with respect to mother’s care for J.B. The social worker observed mother was “meeting the needs” of J.B. and “on top of things.” While mother had expressed a desire to reunite with father, and at some unspecified time suggested he could visit with J.B. without the Department’s supervision, the evidence remained undisputed that she would not permit father to care for J.B. alone while under the influence of marijuana.⁶

As discussed, the underlying premise for the tender years presumption is that young children are so vulnerable that “the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (*Drake M., supra*, 211 Cal.App.4th at pp. 766-767.) While parental substance abuse under such circumstances may serve as *prima facie* evidence of the parent’s inability to provide regular care (*ibid.*), that evidence is not conclusive and may be rebutted by evidence demonstrating a lack of risk. (See Evid. Code, § 602.) Here, the evidence was

⁶ Consistent with that evidence, the Department did not ask the court to find jurisdiction due to any alleged failure of mother to protect J.B. from father’s marijuana use.

undisputed that, notwithstanding father's habitual marijuana use, J.B. was never at risk because mother and the maternal grandparents provided constant care for J.B., father had never used marijuana around the child, and mother would not allow father to care for J.B. when father was under the influence of marijuana. Because the evidence demonstrated that, notwithstanding J.B.'s tender years, father's marijuana use did not put the child at substantial risk of harm, we cannot affirm the court's jurisdictional order. Given the passage of time, however, nothing in this opinion should be read to limit the Department's ability to assert new jurisdictional allegations after remand.

2. *The Evidence Was Insufficient to Support a Restraining Order*

Section 213.5, subdivision (a) authorizes a juvenile court to issue an order "enjoining any person from molesting, attacking, striking, . . . threatening, . . . harassing, . . . coming within a specified distance of, or disturbing the peace of the child [or any parent]." "Issuance of a restraining order under section 213.5 does not require 'evidence that the restrained person has previously molested, attacked, struck, sexually assaulted, stalked, or battered the child.' [Citation.] Nor does it require evidence of a reasonable apprehension of future abuse." (*C.Q.*, *supra*, 219 Cal.App.4th at p. 363.) Section 213.5 is analogous "to Family Code section 6340, which permits the issuance of a protective order under the Domestic Violence Prevention Act [(Fam. Code, § 6200 et seq.)] . . . if 'failure to make [the order] may jeopardize the safety of the petitioner.'" (*In re B.S.* (2009) 172 Cal.App.4th 183, 193-194 (*B.S.*); *In re N.L.* (2015) 236 Cal.App.4th 1460, 1466.)

Where the appellant challenges the evidentiary basis for a restraining order issued under section 213.5, we review the

juvenile court's factual findings for substantial evidence. (*C.Q.*, *supra*, 219 Cal.App.4th at p. 364; *B.S.*, *supra*, 172 Cal.App.4th at p. 193; *In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-211 (*Cassandra B.*); cf. *In re Carlos H.* (2016) 5 Cal.App.5th 861, 866 ["abuse of discretion standard [applies] to determine whether the court properly issued the order"].) Thus, "we view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court's determination. If there is substantial evidence supporting the order, the court's issuance of the restraining order may not be disturbed." (*Cassandra B.*, at pp. 210-211; *B.S.*, at p. 193.)

Here, mother's statement in her restraining order request was the only evidence the court received to support the permanent restraining order. That statement read: "[Father] has been harassing [mother] and pressuring her into giving him unauthorized access to the minor, [J.B.]." Mother did not attach a declaration or any other evidence to the request form. And, although mother's counsel offered to have her testify about father's purported "subsequent efforts to put her in fear," the court declined to take her testimony. On this record, we cannot find substantial evidence to support the court's issuance of the restraining order.

While nonviolent harassment can justify a restraining order under section 213.5, the record here offers no indication, let alone evidence, of how father supposedly harassed mother or what actions he took to pressure her into giving him unauthorized access to J.B. *Cassandra B.* provides an instructive contrast. In that case, the mother of a dependent child challenged a restraining order prohibiting her from coming within 100 yards of the child's foster caretakers. (*Cassandra B.*, *supra*, 125 Cal.App.4th at pp. 204-205.) The mother argued the juvenile court had no authority to issue the order, because

section 213.5 required evidence of violence or threats of violence. (*Id.* at p. 210.)⁷ The *Cassandra B.* court rejected that contention, concluding the term “molesting” should be understood to refer to any “‘conduct designed to disturb, irritate, offend, injure, or at least tend to injure, another person.’” (*Id.* at p. 212.) And the court found “ample evidence” in the record to support the restraining order under that definition, including evidence that mother had “attempt[ed] to gain entry to the home of [her daughter’s] caregivers without their knowledge, . . . follow[ed] behind the caregiver’s car after [her daughter] was picked up from school, [and] threaten[ed] to remove [her daughter] from her caregivers[’] [home].” (*Id.* at pp. 212-213; see also *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1512 (*Brittany K.*) [restraining order protecting foster parents supported by evidence that grandmother concealed herself at a visit to obtain unauthorized access to dependent children, located the confidential foster residence, and showed up unannounced at children’s schools].)

Unlike *Cassandra B.*, here, we can find no evidence to support mother’s vague assertion that father had been harassing her or pressuring her to give him unauthorized access to J.B. Tacitly acknowledging the lack of evidence in her restraining order application, mother points to her earlier visit to a police station, where she alleged father had been harassing her by creating fake social media accounts. However, the record shows the police turned mother away because she had *no evidence* to

⁷ Here, the juvenile court apparently granted the restraining order based on its perception that there were “issues of violence in this case.” Our review of the record discloses no such issues, father argues in his opening brief that there was no evidence of violence, and mother does not dispute father’s contention in her respondent’s brief.

support the allegation, and this same deficiency exists with respect to the allegation of harassment in her restraining order application to the juvenile court. As for father's alleged coercion, mother cites a May 2018 interaction between father and a social worker, in which father disclosed that he had been visiting J.B. at the maternal grandparents' home, without scheduling the visits at the Department's office. But this interaction occurred before J.B.'s detention in August 2018, when father was under a VFM that placed no restrictions on his visitation with the child. In any event, nothing in the record concerning that time period, or the period directly preceding mother's restraining order application, discloses any evidence of father pressuring mother to give him unauthorized access to J.B.

Absent some evidence of what father supposedly did to harass mother or put her in substantial emotional distress, the juvenile court had no evidentiary warrant to grant a restraining order under section 213.5.⁸ As with the jurisdictional finding

⁸ As mother acknowledges, section 213.5 does not define "harassment," but we can take guidance from Code of Civil Procedure section 527.6, which authorizes a civil restraining order "prohibiting harassment." (Code Civ. Proc., § 527.6, subd. (a)(1); see *Brittany K.*, *supra*, 127 Cal.App.4th at pp. 1509-1510 ["reasonable and practical construction of the statutory term 'stalking' can be found by reference to other statutory, legislative and judicial sources, as well as common usage," including Civil Code section 1708.7, which defines "the tort of stalking"]; *Cassandra B.*, *supra*, 125 Cal.App.4th at p. 212 [adopting definition of "molest" from cases interpreting Penal Code section 647.6].) Code of Civil Procedure section 527.6 defines the term "harassment" to include "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose," and which "must be [such as] would *cause a reasonable person to suffer substantial emotional distress*,

discussed earlier, nothing in this opinion should be read to limit mother's ability to make a new request for a restraining order with the requisite evidentiary support.

DISPOSITION

The order declaring J.B. a dependent child is reversed.
The permanent restraining order also is reversed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.

and must actually cause substantial emotional distress to the petitioner.” (Code Civ. Proc., § 527.6, subd. (b)(3), italics added.) Because mother offered no explanation or evidence regarding what course of conduct father allegedly directed at her, the juvenile court had no way to judge whether it was conduct that would objectively “cause a *reasonable* person to suffer substantial emotional distress.” (*Ibid.*, italics added.) Although mother offered to provide testimony regarding father’s purported “subsequent efforts to put her in fear,” the court declined the offer. For this reason, too, the evidence was insufficient to support the restraining order.